IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.901 of 2006
In
Suit No.3856 of 1996

1. All India Central Bank Employees Congress, a Trade Union, registered under the Trade Unions Act, 1925 having its office in Bombay at C/o.Central Bank of India, Central Office, 8th Floor, Chandermukhi, Nariman Point, Mumbai - 400 021.

2. Central Bank Employees Union A Trade Union, registered under Trade Unions Act, 1925, having its office in Bombay at C/o Central Bank of India, Central Office, 8th Floor, Chandermukhi, Nariman Point, Mumbai - 400 021.

3. Subhash Sawant of Bombay Indian Inhabitant, having its address at C/o. All India Central Bank Employees Congress, C/o Central Bank of India, Central Office, 8th Floor, Chandermukhi, Nariman Point, Mumbai - 400 021.

4. Sadashiv M. Kolge of Bombay, Indian Inhabitant having his address C/o.Central Bank of India, Standard Building, Dr.D.N.Road, Fort, Mumbai - 400 023. .. Appellants (Org.Defendants)

Vs.

Central Bank of India, A body Corporate constituted under the Banking Companies (Acquisition and Transfer of

Undertakings Act), 1970, having)
its Central Office at 8th Floor,)
Chandermukhi, Nariman Point,)
Mumbai - 400 021.).. Respondent
(Org.Plaintiff)

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Shri Bhavesh Parmar for the Appellants.

S/Shri Lancy D'Souza i/b V.M.Parkar and Ms Vasanti G.Kunder for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ

DATED : 17TH JANUARY, 2007

ORAL JUDGMENT: (Per R.M.S.Khandeparkar, J)

1. Heard. Admit. By consent, heard forthwith.

2. The appellants challenge the order dated 6th October, 2005 passed by the learned Single Judge in Suit No.3856 of 1996 purportedly in exercise of its jurisdiction under Order VIII Rule 10 of the Code of Civil Procedure, 1908. By the impugned order, the learned Single Judge has decreed the suit in terms of prayer clause (a) of the Plaint.

3. Prayer clause (a) of the plaint refers to claim for a sum of Rs.2,00,000/- as damages alleged to have been suffered by the respondent/plaintiff on account of agitational activities by the appellants/defendants as well as on account of threat

of further agitational activities by the appellants/plaintiffs. In the Exhibit-F annexed to the plaint, particulars of the claim have been described as "damages suffered by the plaintiffs on account of torturous/agitational activities of the defendants."

4. Placing reliance in the decision of the Apex Court in **Balraj Taneja & Anr. v. Sunil Madan & Anr.,** reported in AIR 1999 SC 3381, the learned advocate for the appellants submitted that the impugned order is contrary to the requirements of law under Order VIII Rule 10 of the Code, though it is stated to have been passed in exercise of powers thereunder. It was further submitted that the Court erred in passing the decree in exercise of the powers under Order VIII Rule 10 of the Code without ascertaining whether the respondent/plaintiff had made out a case for awarding damages to the tune of Rs.2,00,000/- as were claimed in the prayer clause (a) of the plaint or not, and therefore, the impugned order is liable to be set aside and the matter should be remanded to the learned Single Judge giving opportunity to the appellants to file their written statement before proceeding with the suit.

5. The learned advocate appearing for the respondent/plaintiff, on the other hand, placing reliance in the decision in **Dhanwantrai R. Joshi & Ors. v. Satish J. Dave & Ors.,** reported in 1999(1) Bom.C.R. 97, submitted that the Court is duly empowered to exercise its discretion to decree the suit on the basis of the facts stated in the plaint, once the defendants fail to file written statement in answer to the summons issued consequent to the filing of the suit, and in the case in hand as the appellants /defendants had failed to file written statement, no fault could be found with the impugned order passed by the learned Single Judge decreeing the suit in the exercise of his jurisdiction under Order VIII Rule 10 of the Code.

6. The facts in brief relevant for the decision in the matter are that the respondent/plaintiff is a nationalised bank and the appellant No.1/org. defendant No.1 is a Trade Union of the employees of the respondent-bank. Under the Memorandum dated 23rd August, 1996, the appellants had placed certain demands for consideration by the respondent-bank and it appears that in the absence of favourable response from the respondent, the members of the appellants started their agitation against the respondent, and in

the process took out a procession and were engaged in slogan shouting, singing of Bhajans, songs and squatting on the floor, dharna activities and various other activities to draw attention of the management of the respondent bank to consider their demands. Consequently, the suit bearing No.3856 of 1996 came to be filed by the respondent. Inspite of the service of the summons therein, the appellants failed to file written statement. When the matter came up for hearing on 6th October, 1996 before the learned Single Judge, the following impugned order was passed:-

> "None for the defendants, though served. Affidavit of service is on record. The defendants have not filed any written statement although they have appeared in the matter. Hence the matter was transferred by order dated 4th July 2003 of the Prothonotary to the list of undefended suits.
>
> In view thereof there will be a decree under Order VIII Rule 10 CPC in terms of prayer clause (a) of the plaint.
>
> Refund as per rules.

Suit stands disposed of with no order as to costs."

7. Plain reading of the above order, therefore, discloses that the learned Single Judge has proceeded to exercise the power under Order VIII Rule 10 of the Code on account of failure on the part of the appellants/defendants to file written statement and has sought to dispose of the suit accordingly.

8. Rule 10 of Order VIII of the Code provides that where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up. The provisions of law comprised under Rule 10 of Order VIII of the Code, therefore, clearly provide that failure on the part of any party to file written statement inspite of the due service of the summons would empower the Court to pronounce judgment against such defendant or to make such order in relation to the suit as it may think fit. It also provides that on pronouncement of such judgment, a decree should be passed. Obviously

therefore, when a suit is to be decreed under Order VIII Rule 10, it has to be by way of pronouncement of judgment. The term "judgment" has been defined under Section 2(9) of the Code to mean the statement given by the Judge on the grounds of a decree or order. The judgment to be pronounced in relation to the suit in exercise of the power under Order VIII Rule 10 of the Code therefore should disclose the grounds which could sustain the reliefs which can be granted in exercise of the power under the said provision of law.

9. The very expression "Judgment" discloses that the Court will have to take into consideration the facts pleaded in the plaint and to ascertain the provisions of law applicable to those facts in order to find out whether the relief claimed on the basis of those facts can be granted or not. Merely because there is no denial of the facts stated in the plaint, it will not be imperative for the Court to decree the suit in exercise of the power under Order VIII Rule 10 of the Code, without even application of the mind and without even ascertaining as to whether in the facts and circumstances disclosed from the plaint and the law applicable thereto, the plaintiff would be entitled to seek the relief asked for or not. The judgment spoken of under Rule 10 of Order VIII of the

Code cannot be pronounced without even ascertaining about the entitlement of the plaintiff to get relief asked for on the basis of the facts pleaded. This is more so in the cases where the suit relates to a claim of damages. It is not only the issue of entitlement of the plaintiff, but the Court will have to consider the fact as to whether the quantum of amount claimed as the damages is just and reasonable in the facts pleaded in the plaint or not. The Apex Court in **Balraj Taneja's case (supra)** had clearly ruled in this regard, thus:-

> ".....the Court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor the Court should proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a written statement has not been filed by the defendant, the Court should be a little cautious in proceeding under Order 8, Rule 10, CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are

treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, **only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy.** Such a case would be covered by the expression "the Court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8."

(Emphasis supplied)

10. The decision in **Dhanwantrai R. Joshi's case (supra)**, rather than assisting the contention sought to be raised on behalf of the respondent, clearly establishes that the impugned order is unsustainable. Attention was sought to be drawn to the paragraph 15 of the said decision wherein it has been held thus:-

> "Decree under Order VIII, Rule 5 or Rule 10 is passed because of the specific provisions under Order VIII that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, then it shall be taken to be admitted except against a person under disability, and thereafter there is a provision that the Court has discretion **to pronounce judgment on the basis of the facts contained in the plaint.**"
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> (Emphasis supplied)

Evidently the power under Order VIII Rule 10 of the Code is in the nature of discretion given to the Court to pronounce judgment on the basis of the facts contained in the plaint. Obviously, therefore, a judgment on the basis of the facts contained in the

plaint would require consideration of the facts contained in the plaint. Consideration of the facts in the plaint has to be accompanied by ascertainment of the provisions of law which could justify grant of relief on the basis of the facts stated in the plaint. Merely because the facts are not denied, the Court cannot proceed to grant relief asked for. Relief must be legally available to the plaintiff on the basis of the facts stated in the plaint and in order to ascertain the same, the Court will have to apply its mind to those facts and ascertain the law applicable thereto. Entire exercise in that regard should be revealed from the judgment to be passed under Order VIII Rule 10 of the Code. It is pertinent to note that the provisions of law comprised under Order VIII Rule 10 of the Code specifically provide that when the Court proceeds to pronounce judgment, then consequent to the pronouncement of such judgment, the decree has to be passed. This very provision which is in the nature of discretion given to the Court on account of failure on the part of the defendants to file written statement discloses an obligation on the part of the Court to exercise its discretion judiciously and not as a matter of course. Even in a case where the pleadings of the parties to the suit disclose that the parties are not at issue on a question of law or fact,

undoubtedly in terms of Order 15 Rule 1 the suit can be disposed of, but the same has to be on pronouncement of judgment and not otherwise. Similar is the case in relation to an admission made by the parties to the suit, based on which, that the issue covered by admission can be disposed of by pronouncing judgment under Order XII Rule 6 of the Code. However, disposal of the suit under all these provisions has to be by way of "pronouncement of judgment" and the judgment as seen above, in terms of Section 2(9) is a statement of the Judge on the grounds of a decision or order and further under Order XX Rule 4, it is clarified that it shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. Even in case of small causes, though there need not be statement of the case and details about the reasons for the decision, but there cannot be a judgment without points for determination and the decision thereon.

11. It is true that the Rule 10 of Order VIII also states that instead of pronouncement of judgment, the Court can "make such order in relation to the suit as it thinks fit." But, it would not be followed by a decree. A decree could be drawn only on pronouncement

of judgment and not otherwise. The term "order" is qualified by the expression "in relation to suit". Obviously it is not an order relating to the disposal of the matter but essentially for further progress of the suit, like the one under Order VII Rule 10 or 10A or under Order IX Rule 6 of the Code.

12. Plain reading of the impugned order discloses that the learned Single Judge has not pronounced any judgment based on the facts stated in the plaint nor has ascertained the law applicable thereto and merely because there is failure on the part of the defendants to file written statement, the suit has been ordered to be decreed in terms of the prayer clause (a) of the plaint. For the reasons stated above, such an exercise is not permissible under Order VIII Rule 10 of the Code and on this count itself, the impugned order cannot be sustained, and therefore, the same is liable to be quashed and set aside and the matter is required to be remanded to the learned Single Judge to dispose of the suit in accordance with the provisions of law. Needless to say that in the facts and circumstances of the case opportunity will have to be given to the appellants/defendants to file written statement within a period of eight weeks from today.

13. The appeal is accordingly allowed. The impugned order is hereby quashed and set aside. The suit is restored to file. The appellants/defendants are permitted to file written statement within a period of eight weeks from today. The matter is remanded to the learned Single Judge to dispose of the suit in accordance with the provisions of law.

14. There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(DR.D.Y.CHANDRACHUD, J)